

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Article 7, Section 3333 and
Article 25, Section 3650 of the General Industry Safety Orders.

Blue Stop Signs**SUMMARY**

This rulemaking was initiated by Board staff as the result of a recommendation from a stakeholder, Mr. John McCullough, of Wells Fargo of California Insurance Services, Inc., contained in a letter to the Board dated February 18, 2009.

In his letter, Mr. McCullough stated that Sections 3333(a) and 3650(t)(23) were not consistent with each other in the use of the terms "blue flags", "blue stop signs" and "blue lights". General Industry Safety Orders (GISO) Section 3650(t)(23) requires the use of blue flags or blue lights while GISO Section 3333 requires the use of blue stop signs and does not mention blue flags or blue lights. Staff concludes that the inconsistency may result in confusion over the application of Sections 3333 and 3650 with regard to the implementation of blue signal protection vital to the safety of railway personnel who could be struck and injured by inadvertent railcar movement.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

The proposed amendments are as follows:

Section 3333. Blue Stop Signs.

This Section addresses the use of blue stop signs on industrial railroad sidings; along with means to prevent railcar movement; the placement of signs and signals, and the design, placement and maintenance of blue stops signs.

Subsection (a) addresses the use of blue stop signs for day and night use and blue lights when needed. Subsections (c), (d), (f) and (g) address requirements for mounting, placement and maintenance of blue stop signs and signals. Amendments of all these subsections are proposed so that all the subsections refer to blue signs, blue flags and blue lights, thereby rendering those

subsections consistent with one another and with Section 3650(t)(23) noting that, in light of the wording of subsection 3333(a), it is not necessary to have the words “blue stop” precede the “signs” in subsections (c), (d), (f) and (g).

Section 3650. Industrial Trucks.

Section 3650 contains standards that include but are not limited to: powered industrial truck (PIT) design in accordance with established national consensus standards, use of front-end attachments, PIT modifications, conversion kits, and the use of trailers. This section also addresses 33 PIT and tow tractor operating rules. Rule number 23 addresses the hazard of railcar movement during loading and unloading requiring brakes and wheel chocks be used and blue flags or blue lights displayed in accordance with Section 3333 and Federal railroad standards. An amendment is proposed to add the words “stop signs”, and “blue”. The proposed amendments will clarify to the employer that blue stop signs and blue flags are included as part of the protection that is required. The proposed amendments will render Section 3650 and Section 3333 references consistent with each other.

DOCUMENTS RELIED UPON

1. Letter dated January 29, 2009 from Mr. John McCullough, CSP, Assistant Vice President, Wells Fargo of California Insurance Services, Inc.
2. Letter dated February 18, 2009 from the Occupational Safety and Health Standards Board to Mr. John McCullough.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small business. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.